THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

APPEAL SUIT No.800 OF 1991
AND
A.S.M.P.Nos.2363 & 2364 of 2011 AND 2699 OF 2012

JUDGMENT:-

The appeal is filed by the plaintiff challenging the final decree in I.A.No.270 of 1989 in O.S.No.32 of 1981 on the file of the Court of the Subordinate Judge at Nalgonda.

2. The suit for partition of the properties was filed in O.S.No.32 of 1981 and a preliminary decree was passed on 18.11.1985 giving 1/3rd share each to the petitioners and the 1st respondent. Thereafter, the application I.A.No.270 of 1989 was filed for appointment of a Commissioner for division of the properties and Sri S.T.P. Venkateshwarlu, Advocate, was appointed as a Commissioner and after inspecting the properties and after measurements filed a report effecting the partition of the properties. Thereafter, the appellant herein filed objections contending that the Commissioner has not properly executed warrant and there was no proper division of the properties. The value of the properties was not considered and no notice was given at the time of execution of the warrant.

3. The Court below after considering the objections had over ruled the same and also accepted the Will set up by the one of the heirs and allotted part-B of agricultural land and lot No.3 in other properties and also A-schedule properties to the plaintiff. Part-A of the agriculatural land and lot No.1 of the other properties were allotted to the 3rd petitioner-Smt K.Manemma, who is wife of the 1st defendant and part of the 'C' of the agricultural land and lot No.2 of the other properties were allotted to the 1st defendant. Aggrieved by the said final decree,

the plaintiff has filed the present appeal.

4. During the pendency of the appeal, A.S.M.P.No.2364 of 2011 was filed by the 4th respondent claiming that the plaintiff has sold part of the property covered in Survey No.320 in 1974 and consequently not to interfere with the possession and enjoyment. A.S.M.P.No.2363 of 2011 was also filed by the 4th respondent to delete the extent of 5808 square yards, which was sold by the plaintiff in 1974. A.S.M.P.No.2699 of 2012 was filed for an injunction by the petitioners restraining the other respondents from alienating the property.

5. The point that arises for consideration is whether the final decree passed by the Court below is not proper and legal?

6. **POINT**:

Learned counsel for the appellant sought to contend that no opportunity was given to prove the contentions raised by the appellant and no evidence was taken and consequently, the decree is not valid. On the other hand, the contesting respondents have submitted before this Court a statement of the alienations done by the plaintiff from 1993 till 1997 numbering 12 alienations, whereunder the plaintiff himself has sold the properties from out of the properties allotted under the final decree. This statement also clearly goes to show as to how other persons have also alienated the property. After passing of the final decree, a total of 22 alienations have taken place by all the parties to the proceedings alienating the rights which they got under the final decree. Having acted upon the final decree it is not open for the appellant now to contend that the decree passed by the Court below is not valid and not proper.

7. So far as the claim of the 4th respondent is concerned, evidently, the 4th respondent was a party to the proceedings and during the pendency of the suit or during the course of the final decree

proceedings did not participate to set up their claim of purchase of the item from the plaintiff. Therefore, at this stage, it is not possible to consider their request for protecting their interest with regard to the property sold by the plaintiff. If at all they have got any grievance they can approach the executing Court and the contention that no summons were served and that they have no knowledge is not a question to be considered at this stage. Therefore, there are no merits in the application and all the applications are also liable to be dismissed.

Accordingly, the appeal and the applications are dismissed. No costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE N.R.L. NAGESWARA RAO

Date: 17.12.2012
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